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P A P E R



Subnational Government in Afghanistan

Michael Shurkin

Prepared for the Marine Corps Intelligence Activity

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NATIONAL DEFENSE RESEARCH INSTITUTE

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Preface

This paper is a primer on subnational government in Afghanistan. It is intended to provide basic information that might be of use to deploying U.S. Marines and soldiers, policymakers, and analysts. It is also intended to assist collectors by pointing to information gaps that should be addressed to support informed decisionmaking. The paper is based on historical and academic studies, as well as recent reporting from civilians working with the military and U.S. and allied government aid agencies.

This research was sponsored by the Marine Corps Intelligence Activity and conducted within the Intelligence Policy Center of the RAND National Defense Research Institute, a federally funded research and development center sponsored by the Office of the Secretary of Defense, the Joint Staff, the Unified Combatant Commands, the Navy, the Marine Corps, the defense agencies, and the defense Intelligence Community.

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Summary

Purpose and Sources

This paper is a primer on subnational government in Afghanistan, and it is meant to inform efforts to strengthen local government in recently cleared areas. Among the problems afflicting the Afghan state are the lack of performance and representation, which together should constitute the base of the state's legitimacy. This paper identifies the various entities of local government. It is based on a review of the available academic and nongovernmental studies of subnational government in Afghanistan and interviews with civilian experts, including consultants attached to U.S. and allied government agencies.

Findings

The existing subnational government across Afghanistan is too centralized and weak to fulfill two basic requirements of legitimacy: effective service provision and representation. The few representatives of the state that are present at the district level are appointed by central government. They are not accountable to local populations and often have few incentives to focus their energies on anything other than personal enrichment, providing for their own client networks, and serving the interests of their patrons.

Opportunities to make the system more participatory and representative should be sought at lower levels to compensate for weak central institutions; the court system must be strengthened where possible. Greater participation might make government actors more responsive to local needs, as well as create opportunities for citizens to interact and identify with the state, which otherwise is either distant or predatory. Constitutionally mandated district, village, and municipal elections, had they taken place, would have provided an opportunity to establish a positive link between communities and the state, notwithstanding probable electoral fraud. That these elections are unlikely to take place in the foreseeable future, however, obliges international actors interested in improving governance to work with what few elements of government exist and to improvise using informal bodies. Public fora, including *shuras*, that are attended by government officials should be supported, and public officials should be given incentives to view serving the interests of the public as commensurate with their personal interests. Public courts can be more present and more effective if they are pro-

vided security and the material support required for them to function more efficiently. There must also be mutual recognition of formal and informal justice systems and their relative roles.

Good intelligence about local politics must precede engagement. International actors hoping to strengthen local government in places like Helmand should be cognizant of the flaws inherent in the current system and attempt to fill important intelligence gaps prior to selecting Afghan partners. The weakness of even informal government and tribal structures in many areas is such that there is no guarantee that any *shura*, elders, or individuals (1) are representative of their community, (2) lend legitimacy to any action taken with their support, and (3) are not acting at the behest of individuals or interests that are inimical to good governance. Tribes are important; however, the nature of their roles and their relative importance varies greatly from province to province, from district to district, and from village to village.

Governance metrics must gauge subjective perceptions of the legitimacy of the Afghan state, rather than objective outputs. Although outputs and service provision are important, ultimately what is “good enough” is a subjective judgment made by Afghans, and our actions have to be planned and evaluated according to their effect on Afghans’ perception of the legitimacy of the state.

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The author would like to thank Ben Connable for his guidance and G. Larry Lamborn, Sippi Azarbaijani-Moghaddam, Hamish Nixon, Olga Oliker, Peter Dahl Thruelsen, and Elizabeth Lee “Ellee” Walker for their insights into local governance.

Abbreviations

AREU	Afghanistan Research and Evaluation Unit
ASOP	Afghanistan Social Outreach Programme
CDC	community development council
DCC	district community council
DDA	district development assembly
IDLG	Independent Directorate of Local Governance
IEC	Independent Election Commission
MRRD	Ministry of Rural Rehabilitation and Development
NGO	nongovernmental organization
NSP	National Solidarity Programme
PDC	provincial development committee
PRT	provincial reconstruction team
SNTV	single nontransferable vote

Introduction

One of the key challenges faced by the U.S. military and other forces in Afghanistan is implementing the governance portion of our current strategy or, in other words, helping the Afghan government improve governance in recently cleared areas. The importance of this endeavor cannot be understated. While there can be no governance without security, there can be no lasting security without governance.

Indeed, General Stanley A. McChrystal made clear that improving governance is an essential pillar of counterinsurgency doctrine and that it is critical to foster a government that the Afghan people find acceptable. The U.S. State Department's January 2010 *Afghanistan and Pakistan Regional Stabilization Strategy* similarly states that "improving the Afghan people's confidence in their government requires improved service delivery, greater accountability, and more protection from predatory government practices, particularly at the district and community level, where the Taliban is providing its own brand of brutal but efficient governance."¹

Strengthening subnational government in the bid to shore up the legitimacy of the Afghan state is, obviously, easier said than done. What would constitute legitimate government in Afghanistan? What is the "state of the state" at the subnational level currently? What can outsiders do to make what exists on the ground function in a manner that enhances the state's legitimacy?

Part of the challenge of defining "good enough" in Afghanistan is the need to match a normative understanding of good governance and political legitimacy with the realities of Afghanistan and Afghan political culture. Rather than attempt a checklist of institutions required or performance benchmarks that must be reached (how can we know how a district governor must do his job to be "good enough"?), it might be helpful to approach the problem in terms of how the contemporary Afghan state might appropriately stake its legitimacy, both from a theoretical point of view and from the perspective of Afghans' own requirements and expectations.

¹ U.S. Department of State, Office of the Special Representative for Afghanistan and Pakistan, "Afghanistan and Pakistan Regional Stabilization Strategy," February 24, 2010.

Theories of Legitimacy and Good Government

Max Weber provides a good place to start.² He drew a distinction between simple power—i.e., the ability to impose one's will—and “legitimate domination,” which he categorized in terms of the ways in which legitimate power motivated “obedience” to “specific or all commands” by “given groups of people.”³ Of Weber's categories of legitimate domination, the only one that applies to contemporary Afghanistan is reason. This is because the Afghan state can only draw limited benefit from the collective memories associated with the traditions of life under the modern Afghan state, which dates to the reign of Abdur Rahman Khan (1880–1901), and does not benefit from what Weber described as domination grounded in the charisma of a leader.⁴ In other words, the Afghan government can only command the obedience of the Afghan people if they view the state's laws as legal and otherwise consider accepting the state's authority as being in their best interest.

Seymour Martin Lipset follows Weber's lead and describes legitimacy as involving “the capacity of a political system to engender and maintain the belief that existing political institutions are the most appropriate or proper ones for the country.”⁵ Lipset associates legitimacy with effectiveness—i.e., capacity—but makes clear that it is more than just effectiveness because it relates to different groups' subjective evaluations of the state's congruence with their values and interests. He also ties legitimacy to representation and identifies various “crises of legitimacy” that occur when (1) all major groups do not secure access to the political system early in the transitional period, (2) major conservative groups and institutions perceive themselves to be threatened by the transition, and (3) the new system is unable to sustain the expectations of major groups.⁶ The trick is to keep the older, conservative privileged groups on board while bringing newer groups into the political arena without causing the former to feel threatened and the latter to feel overly disappointed. Both have to be given incentives to enter the system and stay in it.

Another of Weber's major interpreters, Raymond Aron, noted that for a specifically democratic system to be legitimate, it had to have the buy-in of the political class, which had to accept the artificial nature of the government and agree to its value despite everything.⁷ Again, legitimacy is based by and large on a more or less rational decision. The system had to encourage not just the participation of rival groups but their open competition according to rules that are accepted by all, with the understanding that the alternative—civil war or revolution—would be worse.⁸ The system, moreover, had to guarantee the safety of opposition groups and

² For a similar discussion of Weber's views on legitimacy with respect to the Afghan state, see Wali Shaaker's insightful *Democracy's Dilemma: The Challenges to State Legitimacy in Afghanistan*, Lulu.com, 2010, pp. 7–15.

³ Max Weber, *Wirtschaft und Gesellschaft*, Tübingen, Germany: J. C. B. Mohr, 1922, p. 122. For a discussion of Weber's ideas on power versus domination, see Raymond Aron, *Les Étapes de la Pensée Sociologique*, Paris: Gallimard, 1967, p. 553.

⁴ Weber, 1922, p. 124.

⁵ Seymour Martin Lipset, “Some Social Requisites of Democracy: Economic Development and Political Legitimacy,” *American Political Science Review*, Vol. 53, No. 1, 1959, p. 86.

⁶ Lipset, 1959, p. 83.

⁷ Raymond Aron, *Essai sur les Libertés*, Paris: Hachette, 1998, p. 83.

⁸ Raymond Aron, *Introduction à la Philosophie Politique*, Paris: Éditions de Fallois, 1997, p. 51.

give them enough promise of future victory to keep them committed to the system.⁹ It would help, Aron argued, if citizens participated in the administration of local affairs and the management of public matters.¹⁰

Taken together, Weber, Lipset, and Aron describe a legitimate democratic state as one that bases its legitimacy ultimately on its appeal to citizens' good sense, primarily through its ability to deliver expected benefits and provide services that accord with their values and confirm them in the conviction that the alternatives would be worse. But legitimacy also requires representation in the sense of involving a broad array of groups—including conservative elements that are jealous of their past prerogatives and newer groups that are perhaps overly eager to appropriate them—in a peaceful, rules-based competition that protects minorities, holds out for the opposition the prospect of winning the next election, and encourages compromise. Much of that competition, moreover, should take place at the local level.

More-contemporary researchers generally agree on the importance of local political participation and have developed further ideas about the kind of local government that is most likely to perform well. They define local government in terms of specific institutions, whereas local governance is a broader concept that refers to the “formulation and execution of collective action at the local level” and encompasses the “roles of formal institutions of local government and government hierarchies, as well as the roles of informal norms, networks, community organizations, and neighborhood associations in pursuing collective action by defining the framework for citizen-citizen and citizen-state interactions, collective decision making, and delivery of local public services.”¹¹ The consensus among development specialists in particular is that “good” local governance is best served by a local government that has, to at least some degree, the means to be responsive to local needs, suggesting a measure of decentralization and a mechanism that enables citizens to communicate their interests and obliges local state actors to listen to them. A recent United Nations Development Programme primer, for example, points to the necessity of having local government entities with the ability to exercise some control over what they do with their money, but it stresses that “fiscal decentralization,” though necessary, is insufficient unless “local governments are politically empowered by having democratically elected and representative local councils,” for otherwise “citizens will not be able to hold their governments accountable.”¹²

Good Government in Afghan Eyes

The largely academic and normative vision outlined above of what might constitute a legitimate Afghan state based on performance and comprehensive representation matches what we know about what most Afghans desire of a state. Very little empirical research has been done

⁹ Aron, 1997, pp. 36, 38.

¹⁰ Aron, 1998, p. 26.

¹¹ Anwar Shah and Sana Shah, “The New Vision of Local Governance and the Evolving Roles of Local Governments,” in Anwar Shah, ed., *Local Governance in Developing Countries*, Public Sector Governance and Accountability Series, Washington, D.C.: The International Bank for Reconstruction and Development/The World Bank, 2006, pp. 1–2. See also United Nations Development Programme, *Governance Indicators: A Users' Guide*, Second Edition, New York: United Nations Development Programme, 2007, p. 1.

¹² *UNDP Primer: Fiscal Decentralization and Poverty Reduction*, United Nations Development Programme, 2005, p. 2.

on Afghan political culture or even on such fundamental questions as whether Afghans even want a state and, if so, what kind. We can nonetheless turn to expert qualitative assessments from the handful of Western scholars who, by virtue of having worked on and lived in Afghanistan for much of their professional careers, speak with unusual authority. They generally agree that Afghans emerged from the horrors of the anti-Soviet jihad, the civil war, and Taliban rule with a strong national identity and a desire for a central, unitary state that could provide basic services, chief among them security from warlordism and banditry.¹³ Moreover, because the political players of the 1980s and 1990s had so badly discredited themselves, Afghans welcomed foreign intervention and the opportunity it provided to construct something new and better than what they had known previously, provided that whatever kind of government emerged satisfied expectations at least in part and was compatible with Islam.¹⁴ Afghans were consequently receptive to innovation—i.e., democracy—provided that the democratic government performed.¹⁵ Moreover, most Afghans, for all their support for a unitary state and their suspicion of federalism, insist on a high degree of representation and self-determination at the local and regional levels, consistent with historical and traditional autonomy for some and/or the political gains for which many communities had fought in the 1990s. They are simply not prepared to return to the status quo ante bellum, that distant Afghanistan of the Durrani Monarchy.¹⁶

In sum, the legitimacy of the contemporary Afghan state rests precariously on the collective will of the Afghan people, who ask it to perform at a level consistent with their expectations and provide an unprecedented level of representation, particularly at the local and regional levels. With respect to such details as what kind of role the state justice system should play or what kind of relationship there should be between formal and informal justice, little can be said with confidence as a nationally valid generalization, other than that Afghans want justice and, at the very least, they do not want the state to contribute to injustice. Corrupt courts, the promotion by the system of individuals with records of abuses, and the notoriously bad behavior of Afghan police do not help.

¹³ Thomas Barfield, *Afghanistan: A Cultural and Political History*, Princeton, N.J.: Princeton University Press, 2010, pp. 8, 277–280; Bernt Glatzer, “Afghanistan—Un État en Profonde Mutation,” *Agriculture and Développement Rural*, Vol. 13, No. 2, 2006, p. 33; Thomas Ruttig, *Afghanistan: Institutionen ohne Demokratie—Strukturelle Schwächen des Staatsaufbaus und Ansätze für eine politische Stabilisierung*, SWP-Studie, Berlin: Stiftung Wissenschaft und Politik, Deutsches Institut für Internationale Politik und Sicherheit, 2008, p. 10; Thomas Ruttig, “2010 Elections 6, All Together Now: ‘This Is Not Switzerland,’” Afghanistan Analysts Network, September 18, 2010b; Thomas Ruttig, “Zu Wenig, Reichlich Spät—Stabilisierungsmaßnahmen in Afghanistan Zwischen Terrorismus—und Aufstandsbekämpfung,” *Aus Politik und Zeitgeschichte*, No. 21–22, May 25, 2010a, p. 34.

¹⁴ Ruttig, 2008, p. 10; Ruttig, 2010a, p. 34; Barfield, 2010, pp. 277–282.

¹⁵ Barfield, 2010, pp. 8, 294, 301–302.

¹⁶ Glatzer, 2006, p. 33; J. Alexander Thier, “The Making of a Constitution in Afghanistan,” *New York Law School Law Review*, Vol. 51, 2006, pp. 575–578.

The State of the Subnational State in Afghanistan

Rather than add to the pile of reports that document the ineffectiveness and abuses of the Afghan state, the focus here is on representation and the disconnect between what is required for political legitimacy in contemporary Afghanistan—not just performance but also broad representation and open rules-based competition—and the reality of a state that offers little opportunity for representation and competition. Part of the problem is the structure of the state. Whereas Aron defined the constitution of a stable democratic state as “the organization of competition,” the contemporary Afghan state is a revival of the state that existed under King Zahir Shah and that was arguably adequate for that regime, rooted as it was in tradition at a time when Afghans expected far less with respect to effectiveness and representation.¹ The structural lack of competition and representation has significant ramifications for performance, for it inhibits accountability and pushes political competition outside the formal, legal system, where it has taken the form of informal contests for patronage and the capture of resources. The formal rules of the game become meaningless, and performance by state officials becomes transactional rather than rational.

The contemporary Afghan state is divided into 34 provinces, 399 districts, approximately 217 municipalities, and roughly 40,020 villages.² Although the number of provinces and districts has changed, the basic form of the government predates the 2004 constitution and can be traced to the reign of Abdur Rahman Khan (1880–1901) and the 1923 constitution, Afghanistan’s first. The current text is nearly identical to the constitution promulgated in 1964 by Zahir Shah.

The most salient characteristic of the state—inherited from its predecessors—is its extreme centralization. Technically speaking, there are no local governments in Afghanistan except for municipalities, at least not if we define local governments as autonomous corporate entities with some binding decisionmaking power and some discretion over their financial resources.³ Afghans have nothing like our state and county administrations, with their elections, levies, assessments, and budgets. What they have instead are provincial and district offices of the central state: Provincial and district-level government in Afghanistan is no more than the aggregation of governors’ offices and the provincial and district-level representatives of the country’s “line ministries” (Table 2.1). Provincial governors represent the central state, exercise a vague

¹ Aron, 1997, p. 42.

² World Bank, *Service Delivery and Governance at the Sub-National Level in Afghanistan*, Washington, D.C.: World Bank, July 2007, pp. v–vi.

³ Roland White and Jamie Boex, *Intergovernmental Fiscal Relations and Subnational Expenditures in Afghanistan*, Washington, D.C.: World Bank, August 2008, p. 2.

Table 2.1
Afghan Subnational Government as Mandated by the 2004 Constitution

Level	Type of Government			
Provincial level	Provincial governor (appointed)	Provincial council (elected)	Line ministries (appointed)	Provincial-level courts and prosecutors (appointed)
District level	District governor (appointed)	District council (elected)	Line ministries (appointed)	District courts and prosecutors (appointed)
Municipalities	Mayors (elected by voters)	Municipal council (elected)	Line ministries (appointed)	
Villages	None	Village council (elected)		

SOURCE: World Bank, 2007, p. x.

coordinating and oversight function *vis-à-vis* the ministries, and have primary control over the police and district governors. District governors represent the provincial administration; maintain the civil registry of births, deaths, and marriages; and also have a vague coordinating and oversight role. Municipalities are the exception because they are expected to be self-sufficient and keep the revenue they generate—usually through a variety of taxes and user fees.⁴ As a rule, however, their revenues are insufficient for their needs. They receive some support from the central government, but the processes involved are “intrinsically inequitable, inefficient and vulnerable to a politicized allocation process.”⁵ According to one source, Kabul is the only municipality to receive fiscal support from the central government.⁶

The problem with such extreme centralization is that none in the provincial and district-level administrations is accountable to the people or has strong incentives to serve the people well with what little capacity they have—which is not much, given the small size of provincial and district governors’ and ministry offices’ staffs, their meager office budgets, and their lack of managerial capacity and organization.⁷ Provincial councils represent an exception, although they are weak and generally perceived as worthless institutions.⁸ There are no district, municipal, or village councils because Kabul continues to put off holding elections for them; there are mayors, but they are appointed by the president rather than elected.

Virtually all senior provincial and district officials, including governors and ministry department heads, are more or less appointed by the president in a process that favors the political and economic calculus of Karzai’s patronage networks over merit, ability, or local preferences.⁹ All, moreover, report upward. Provincial governors report to the Independent Directorate of Local Governance (IDLG); district governors report to the IDLG via provincial

⁴ Vijaya Samaraweera, *Municipal Governance in Afghanistan: A Handbook*, Kabul, Afghanistan: ICMA International, 2009, p. 22.

⁵ World Bank, 2007, p. 21.

⁶ White and Boex, 2008, p. 33.

⁷ White and Boex, 2008, p. 44.

⁸ Anna Larson, *Toward an Afghan Democracy? Exploring Perceptions of Democratization in Afghanistan*, Kabul, Afghanistan: Afghanistan Research and Evaluation Unit, 2009, p. 20.

⁹ Martine van Bijlert, *Between Discipline and Discretion: Policies Surrounding Senior Subnational Appointments*, Kabul, Afghanistan: Afghanistan Research and Evaluation Unit, 2009.

governors. Provincial-level ministry department heads report to their ministry's front office in Kabul; district-level department heads report to Kabul via the provincial-level administration. If district-level officials want more slots for teachers, for example, they have to pass the request to Kabul, using the provincial-level officials as middlemen. The decision, however, is made in Kabul.¹⁰

How the system works becomes particularly clear with respect to finances. Strictly speaking, there are no provincial or district budgets, simply a single national budget that allocates money to each ministry, which then divides the money among different provinces when it disburses funds to its provincial offices. The decisions are made in Kabul, and provincial-level administrators have little or no say about the process until money is disbursed to provincial ministry offices, where the provincial-level ministry administrators make decisions about district-level disbursement and are responsible for providing services. At that point, provincial officials enjoy a measure of discretion regarding financial matters, thanks to formal and informal administrative and political powers. Governors and ministry department heads are assigned certain approval powers for expenditure authorization and procurement, and they have extensive powers over the appointment of civil servants. Governors may also have their own revenue sources, licit or otherwise; fund projects off-budget; or control access to government services. All of these powers can be used for good or for ill. Either way, much of what happens to government money disbursed at the provincial level and below takes place outside the purview of any of the existing accountability mechanisms.¹¹ To make matters worse, most of the money spent on development by international donors, including the U.S. military, is spent outside the government budget and tends to short-circuit the state altogether, with the result that it undermines the state and creates parallel authorities and patronage networks.

Authority at the Provincial and District Level

The contrast between the *de facto* powers enjoyed by provincial- and district-level officials to influence financial matters without being empowered to set policy or influence decisions in Kabul is a classic example of the conflict between their weak formal authorities and capacities and their often much-stronger informal roles. Provincial governors or other prominent members of the provincial government often go beyond their narrow formal roles by drawing informal power from some combination of personal ties to the president, tribal connections, licit and illicit revenues, and access to armed force.¹² District governors similarly exercise considerable informal power far beyond their official mandate of coordination, according to an Afghanistan Research and Evaluation Unit (AREU) study.¹³ The study found that district governors play the central local role in the “‘political government of relationships’ alongside and at times in contradiction to efforts at technical state-building.”¹⁴ According to the AREU,

¹⁰ White and Boex, 2008, p. 48.

¹¹ White and Boex, 2008, pp. 5, 8.

¹² Hamish Nixon, *Subnational State-Building in Afghanistan*, Synthesis Paper Series, Kabul, Afghanistan: Afghanistan Research and Evaluation Unit, 2008b, pp. 14–15.

¹³ Nixon, 2008b, pp. 24–25.

¹⁴ Nixon, 2008b, pp. 24, 28.

the executive branch uses the district governor to extend its networks of relationships to the local level—at least to the extent that it can control the behavior of the governor through the appointments system, which is itself heavily influenced by the provincial government.¹⁵ The district governors, meanwhile, can access resources and influence of their own, through varying degrees of corruption and/or involvement in the drug trade.¹⁶ They also play a critical role in dispute resolution because of their *de facto* status as “gatekeepers” to the local government or as key interlocutors between citizens and the state. Specifically, district governors decide “what the appropriate response to any given petition may be when it first reaches the formal institutions of the state.”¹⁷ In simpler terms, they control access for community leaders or members to government resources, especially if the provincial reconstruction team (PRT) or other actors are injecting resources into the community and using the governor as their prime interlocutor. Outside actors should be aware that requests for help and even intelligence on antigovernment activity may have been vetted beforehand by the governor to ensure that whatever reaches their ears is consistent with the governors’ interests.

Provincial and District Councils

In the absence of district, municipal, and village councils, provincial councils constitute the only elected element of the state at the subnational level. Unfortunately, the councils have little if any role in provincial government, and, even by the admission of the IDLG, the public regards the councils as unrepresentative and of little value because of problems relating to the manner in which they were elected, poor candidate vetting, and their lack of any meaningful role.¹⁸ For example, the law treats provinces and districts as single constituencies for provincial and district elections, and it requires the use of the single nontransferable vote (SNTV) method. Consequently, the law favors candidates who can muster a solid voter bloc in a single area rather than appeal to voters in multiple areas, resulting in provincial councils (and provincial delegations to the National Assembly, which are elected in the same manner) that are perceived to represent only a few communities to the detriment of everyone else.¹⁹ Provincial councils have no independent funding sources and depend on the governors for everything, including office space. It should also be noted that the absence of district councils deprives Afghan citizens of an opportunity to strengthen their relationship with the central government, since the constitution reserves for district councils the power to elect a third of the National Assembly’s Upper House. Currently the provincial councils elect both the district councils’ third and the third allotted to them by the constitution.

Despite the blemishes marring the provincial councils, anecdotal evidence suggests that there is some identification with the provincial councils, as well as recognition of them as legiti-

¹⁵ Nixon, 2008b, p. 25.

¹⁶ Nixon, 2008b.

¹⁷ Nixon, 2008b, p. 24.

¹⁸ Fatima Ayub, Antonella Deledda, and Patricia Gossman, *Vetting Lessons for the 2009–10 Elections in Afghanistan*, New York: International Center for Transitional Justice, 2009; IDLG, *Subnational Governance Policy*, draft, 2009, pp. 67–69; Nixon, 2008b, pp. 18–23; Ruttig, 2008, p. 25.

¹⁹ Nixon, 2008b, p. 22.

mate (if not effective) institutions. There was no lack of candidates for the 2009 elections, and there is evidence suggesting that voters were more interested in the provincial council contests than the national presidential ones, if only because of the greater immediacy of provincial politics and the opportunities they generate.²⁰ This suggests that if the constitutionally mandated district, municipal, and village elections took place, they would serve as opportunities for strengthening ties between citizens and the state and invite greater participation in politics than is currently the case, even though electoral fraud and irregularities of all sorts would almost certainly make the polling anything but free and fair. Indeed, AREU researchers argue that, at least in the provinces they studied, the 2009 elections can be regarded as positive steps forward in terms of the development of modern, participatory politics in a country that has experience with nothing of the sort.²¹

Justice System

The provision of justice counts among Afghans' expectations of the state, and thus the state of the subnational justice system merits attention. Because the police in recent years have received considerable attention and investment from the international community, the focus here is on the state court system, which is part of the constitutionally mandated state administration that reaches into the periphery alongside the provincial and district administrations.

The constitution and Afghan law mandate a hierarchy of provincial and municipal primary and appeals courts and state prosecutors working under the direction of several entities with overlapping authorities, including the Ministry of Justice, the Ministry of Interior, the Supreme Court, and the Attorney General's Office. There should be one primary court and one prosecutor in every district, and each court should have three judges.²² The enforcement of law and provision of justice, especially since it occasions direct and important interactions between citizens and the state, is critical to the state's legitimacy.²³ Unfortunately, the Afghan state falls short. Afghan courts have little presence in the countryside because of a combination of factors, most notably insecurity and the scarcity of qualified personnel. Those courts that do function are hampered by insecurity, deficient infrastructure and materials (courtrooms, office space, law manuals, and other legal texts), low pay—which encourages corruption—and variable degrees of training, ranging from primary school to the graduate level.²⁴ Indeed, only 56 percent of Afghan judges have relevant university-level legal educations, according to a 2007 study.²⁵ Several studies have indicated that most Afghans have little confidence in the court system, regard it as corrupt and slow, and prefer turning to informal bodies—such as

²⁰ Noah Coburn and Anna Larson, *Voting Together: Why Afghanistan's 2009 Elections Were (and Were Not) a Disaster*, Briefing Paper Series, Kabul, Afghanistan: Afghanistan Research and Evaluation Unit, 2009, p. 3.

²¹ Coburn and Larson, 2009, p. 2.

²² Center for Policy and Human Development, *2007 Afghanistan Human Development Report—Bridging Modernity and Tradition: Rule of Law and the Search for Justice*, Islamabad, Pakistan: Army Press, 2007, p. 70.

²³ William Maley, "Building Legitimacy in Post-Taliban Afghanistan," in the Asia Foundation, *State Building, Security, and Social Change in Afghanistan: Reflections on a Survey of the Afghan People*, Kabul, Afghanistan: The Asia Foundation, 2008, p. 22.

²⁴ Center for Policy and Human Development, 2007, pp. 71–72.

²⁵ Center for Policy and Human Development, 2007, p. 70.

jirgas and *shuras* of local elders—to resolve disputes and mete out justice.²⁶ These studies note that regard for the state courts is lower in rural areas than in urban areas and is particularly low in southern Afghanistan.

Informal and Semiofficial Alternative Governance Mechanisms

Kabul and the international community have tried to address some of the inadequacies of the constitutional system through initiatives that can be described as “quasi-governmental,” in that they enjoy official sanction, are partially administered by government ministries or the IDLG, and are to some extent intended to fill the places in district and village-level governance left by the absence of district and village councils (see Table 2.2). However, the new programs and entities bring new problems, have no legally defined relationship with the constitutional system, and are to some degree extensions of foreign governments and nongovernmental organizations (NGOs). None of the programs addresses municipal government. The IDLG at least is aware of the inadequacies of the resulting subnational structures and in 2009 drafted a *Sub-national Governance Policy* that includes a sober assessment and recommendations for substantive reforms, although it remains to be seen if the Afghan government will act on them.

The governance “patches” with the best reputation among Western observers are the village-level CDCs run by the Ministry of Rural Rehabilitation and Development (MRRD) as part of the World Bank–funded National Solidarity Programme (NSP).²⁷ CDCs can now be found in most of Afghanistan, including Helmand. Rural communities or even clusters of people within communities elect CDCs, which are charged with putting together proposals

Table 2.2
Existing Subnational Governmental and Quasi-Governmental Entities

Level	Afghan State	Quasi-Governmental Entity
Provincial	Provincial governor, line ministries, provincial council	Provincial development committees (PDCs)
District	District governor, line ministries	District development assemblies (DDAs) and district community councils (DCCs)
Municipal	Mayors, line ministries	
Village		Community development council (CDC)

²⁶ Center for Policy and Human Development, 2007, pp. 73–75; Ruth Rennie, Sudhindra Sharma, and Pawan Sen, *Afghanistan in 2009: A Survey of the Afghan People*, Kabul, Afghanistan: The Asia Foundation, 2009, pp. 85–88; Sudhindra Sharma and Pawan Kumar Sen, “Institutionalization of the Justice System,” in the Asia Foundation, *State Building, Security, and Social Change in Afghanistan: Reflections on a Survey of the Afghan People*, Kabul, Afghanistan: The Asia Foundation, 2008, pp. 45–49.

²⁷ Examples of positive reports on NSP include comment by Rory Stewart, “Insight with Rory Stewart: In Between Conflicts,” talk at the Frontline Club, London, March 11, 2009; “Wise Council: Village-Development Councils Are Taking on More Serious Roles,” *The Economist*, March 25, 2010; and Sabrina Tavernise, “Afghan Enclave Seen as Model for Development,” *New York Times*, November 12, 2009. The most substantive study of NSP, which gives a qualified but nonetheless positive assessment, is, of course, Hamish Nixon, *The Changing Face of Local Governance? Community Development Councils in Afghanistan*, Working Paper Series, Kabul, Afghanistan: Afghanistan Research and Evaluation Unit, 2008a.

for small-scale development projects for which the MRRD awards grants of up to \$60,000, which are funded by the World Bank in conjunction with international donors. CDCs—it must be stressed—are the only elected elements of the subnational administration other than the provincial councils, although many CDC elections have not been what we would consider democratic, but, rather, exercises that enabled local elites to extend their influence.²⁸

CDCs qualify as local governments in the sense that they are autonomous, generally raise their own revenue (as a small portion of their operating budgets), and dispose of their funds as they see fit. The distinction matters: AREU studies have shown that two qualities make CDCs successful, (1) their ability to follow through with development plans and deliver tangible benefits and (2) their representativeness. They are at least to some extent elected locally, geared to meet local needs, and able to deliver services.²⁹ Some CDCs have gone beyond their narrow development-related mandate to provide other government services, such as conflict resolution, and there is a consensus among Western analysts and some in the Afghan government in favor of encouraging CDCs to take on broader governance roles.³⁰ The World Bank and the IDLG have agreed in principle to have CDCs become the formal village councils promised by the constitution, although the pace of the transformation will probably vary from place to place and may particularly lag in insecure areas, such as Helmand.³¹

At the district level, the recent initiatives have done little to strengthen the government or fill the gap left by the failure to establish district councils. The MRRD established DDAs in the attempt to coordinate the efforts of CDCs at the district level, with each DDA consisting of CDC chairs and (unelected) representatives of communities that have no CDCs. The little data available about DDA activities suggest that their viability is doubtful. In late 2009, the IDLG launched a new initiative as part of the Afghan Social Outreach Programme (ASOP), which is the IDLG's effort to bridge the gap between citizens and the state, primarily by trying to involve local traditional authorities in government. Working with PRTs, the IDLG established DCCs in a few districts in several select provinces. The DCCs are meant to be interim measures until district council elections are finally held.³² The DCCs do not have any formal connection to the DDAs, although the IDLG appears to have taken note of the CDCs' forays into dispute resolution by mandating that DCCs operate justice subcommittees to take on various rule of law projects, including the resolution of land disputes. DCCs in fact operate three subcommittees dedicated to security, social and economic development, and justice. Because of the overlap with DDAs with regard to development issues, the IDLG and MRRD are increasing coordination of efforts and considering a merger of existing and functional DDAs with the social and economic subcommittees of the DCCs.³³

²⁸ Ruttig, 2008, p. 26; Conrad Schetter, "Lokale Macht—und Gewalt—Strukturen in Afghanistan," *Aus Politik und Zeitgeschichte*, No. 39, September 24, 2007. Examples and discussion of the different ways in which CDC elections have taken place can be found in Sultan Barakat, *Mid-Term Evaluation Report of the National Solidarity Programme (NSP), Afghanistan*, York, United Kingdom: Post-War Reconstruction and Development Unit, University of York, and Ministry of Rural Rehabilitation and Development, Islamic Republic of Afghanistan, 2006; and Nixon, 2008a.

²⁹ Nixon, 2008a, p. 36.

³⁰ Nixon, 2008a, p. 8; "Wise Council: Village-Development Councils Are Taking on More Serious Roles," 2010.

³¹ IDLG, 2009, p. 75; Nixon, 2008a, p. 35; Hamish Nixon, personal communication with the author, July 2010.

³² Elizabeth Lee Walker, "Culturally-Attuned Governance and Justice Approach in Helmand Province," briefing slides, 2010, slide 12.

³³ International Security Assistance Force Rule of Law advisor, personal communication with the author, March 13, 2010.

DCCs are not elected through universal suffrage but indirectly through a formal electoral college, which offers certain advantages over direct elections, given the poor access and insecurity that exists in many areas. Regardless of the precise form of the elections, what matters is whether people regard the process as transparent and inclusive and whether they can grasp how representatives are selected.³⁴ A committee consisting of the provincial council, the offices of the provincial and district governor, the IDLG, and an advisor from the Office of Borders and Tribal Affairs nominates 200–300 elders to attend an election *shura*, and these community elders are split into wards to elect 35–40 DCC representatives by secret ballot.³⁵ The use of wards is meant to avoid the problems associated with the provincial councils resulting from the current electoral law. Specifically, because the law designates entire provinces as an electoral bloc, many districts find themselves without representation. The use of wards guarantees broader representation.

At the provincial level, Kabul in 2005 created PDCs. These have a very limited purpose, as they are only intended to facilitate coordination among the various stakeholders with regard to development. These include provincial governors, provincial councils, NGOs, and PRTs. PDCs are not funded, nor are they part of a program in the way that CDCs are backed by NSP or DCCs are tied to ASOP. However, their portfolio overlaps with that of the provincial councils, which probably contributes to watering down the provincial councils' authority and adding to the confusion about what exactly the councils are supposed to do. Like the provincial councils, they are highly dependent on the cooperation of provincial governors.³⁶

Traditional Sources of Local Authority

The net weakness of Afghanistan's subnational government also leaves plenty of room for traditional or customary forms of governance to persist. At nearly all levels, one can find various forms of *shuras* and *jirgas*, consisting of some combination of tribal leaders, elders, *ulema* (clerical elites—i.e., *mullahs* and *mulawis*), and militia commanders or other strongmen. *Jirgas* are classically open forums for discussion at the village level in which, most often, older, respected men gather to make decisions that affect the community, including arbitrating disputes in conformity with local customs—variants of the Pashtun code of conduct (*pashtunwali*) among ethnic Pashtuns but also other customs in other communities.³⁷ A *shura* traditionally functions like an advisory council in the service of a ruler, who is not bound to its decisions. In many areas it is a recent innovation, sometimes dating to the 1980s.³⁸ Both play an important role in providing justice outside of urban centers, and multiple surveys have shown that Afghans everywhere—but particularly in rural areas—look more favorably on them as sources of justice than they do formal state courts.³⁹ *Shuras* and *jirgas* also have some role in governing. District

³⁴ Hamish Nixon, personal communication with the author, July 2010.

³⁵ International Security Assistance Force Rule of Law advisor, personal communication with the author, March 13, 2010.

³⁶ Nixon, 2008b, p. 20.

³⁷ Ali Wardak, *Jirga—A Traditional Mechanism of Conflict Resolution in Afghanistan*, University of Glamorgan, UK, pp. 4–5.

³⁸ Ruttig, 2008, p. 11.

³⁹ Rennie, Sharma, and Sen, 2009, pp. 89–90.

governors, for example, commonly convene some kind of informal *shura* to advise them on local issues or pass down directives, according to an AREU study.⁴⁰

These assemblies, however, are not necessarily representative of a given constituency and may not have enough credibility of their own to lend any legitimacy to district administrations. Traditional sources of authority, such as tribes and *ulemas*, have in many areas lost a lot of influence because of decades of war and displacement, and insecurity saps all bodies' ability to influence hearts and minds. Just because there is a *shura* making a decision does not necessarily mean that the decision has any legitimacy in the eyes of the local population, and it is important to collect good information about the *shura*, its composition, its formation, and its public stature. A key question that must be asked is whether a body, such as a *shura*, emerges and works transparently in such a way that significant groups of people do not feel left out or marginalized.⁴¹

One possible source of authority that remains below Western radars and that should be investigated is the *ulemas*, which traditionally play an important role in shaping public opinion and can strengthen or undermine rulers' claims to legitimacy. Afghanistan's *ulemas* are constituted in district-, provincial-, and national-level councils, although their role at any of these levels is unclear and probably varies greatly from place to place. Nonetheless, at least one scholar assesses their political influence to be significant, and at the very least they often have a hand in the provision of informal justice.⁴² Afghanistan's precommunist governments tried to institutionalize *ulemas* and use them to substantiate the state's Islamic credentials and act as auxiliaries to state power, and during the anti-Soviet war some Afghan *ulemas* acquired new political influence.⁴³ Though the Taliban raised certain networks of *ulemas* to power, *ulemas* not connected to those networks tended to side with the opposition, and today there is evidence that they represent a bulwark against Taliban influence.⁴⁴ Perhaps the most compelling proof is the Taliban's practice of assassinating *ulema* members.

⁴⁰ Nixon, 2008b, p. 28.

⁴¹ Hamish Nixon, personal communication with the author, March 2010.

⁴² Ruttig, 2008, p. 18.

⁴³ Ruttig, 2008. See also Gilles Dorronsoro, "Les Oulémas Afghans au XXe Siècle: Bureaucratisation, Contestation et Genèse d'un État Clérical," *Archives de Sciences Sociales des Religions*, Vol. 115, 2001, pp. 63–79.

⁴⁴ Dorronsoro, 2001, p. 7.

Opportunities for Progress

Measures that could strengthen subnational governance in Afghanistan fall under two general categories: (1) reforms necessary for the long-term legitimacy and viability of the Afghan state and (2) immediate steps that U.S. and allied commanders and officials in the field should take to strengthen subnational governance in the wake of the ongoing efforts to clear territory of the Taliban. The former are dealt with at length elsewhere, most notably by the IDLG's 2009 *Subnational Governance Policy* paper and the AREU's succinct post-London Conference communiqué, which calls on the donor community to take concrete steps toward building viable political institutions without which, the AREU argues, a lasting peace will remain unlikely.¹ In addition, anything that would improve the performance of state officials and institutions in the short or long term would help.

Reforms That Would Support Long-Term Legitimacy

The steps outlined by the IDLG and the AREU include holding district council elections, passing laws that would provide district and provincial councils with clear powers, and, above all, enacting concrete measures to promote credible elections and democratic institutions: fully supporting the 2010 legislative elections, scrubbing voter registration lists, reforming the Independent Election Commission (IEC), and repealing the 2005 electoral law and its insistence on using SNTV, which sets up Afghan elections to fail.² Motivating the Afghan government to move ahead with these recommendations has not been a priority of the U.S. government and its allies, but it should be—particularly in light of Karzai's recent unilateral modification of the election law to increase his influence over the IEC and the Electoral Complaint Commission, the election watchdog that played a critical role in calling out the massive fraud associated with the August elections.³

¹ Anna Larson, *Lasting Peace Requires Accountable Political Institutions: An AREU Statement on the Importance of Elections Following the London Conference on Afghanistan*, Kabul, Afghanistan: Afghanistan Research and Evaluation Unit, n.d.

² On the SNTV system, its effects on Afghan elections, and the need to replace it, see Coburn and Larson, 2009, p. 19; IDLG, 2009, p. 68; Larson, 2009, pp. 23, 26; Sarah Lister and Hamish Nixon, *Provincial Governance Structures in Afghanistan: From Confusion to Vision*, briefing paper, Kabul, Afghanistan: Afghanistan Research and Evaluation Unit, 2006, p. 7; and Ruttig, 2008, p. 25.

³ Martine van Bijlert, "Dreaming of a Pliable Parliament and a Ruling Family," *Afghanistan Analysts Network*, February 24, 2010.

Recommendations for Operational-Level Commands

With regard to concrete, short-term opportunities available to commanders and civilian officials, everything ultimately depends on providing security and identifying which formal and informal institutions and actors in each district can or should be leveraged and supported. These should be identified by consulting with as broad an array of local informants as possible, as well as consulting with Afghan and international officials who are likely to have some knowledge of a particular community. Subnational governance should also be improved by increasing the participatory nature and the perceived representative quality of local government and by helping district and provincial courts extend their reach and improve their performance.

Encourage greater popular participation in governance. Greater participation in government could be achieved by cultivating fora in which respected community leaders have the opportunity to speak and by encouraging governors and ministry officers to listen to them and, ideally, to perceive it to be in their direct interest to respond to public wishes. This would involve engaging district and municipal *shuras*, reaching out to tribal leaders and the *ulemas*, and finding ways to reward officials for acting in the public's interest. As mentioned above, care must be taken to identify these actors, the interests they represent, and the degree to which they are in fact legitimate representatives of given communities. In order to reduce the risks of exacerbating local conflicts, it is important that the process for constituting and engaging with local councils be highly transparent to all communities and groups.⁴ Communication regarding the process for creating councils and development plans should precede action.

Strengthen informal or semiofficial bodies. CDCs represent another opportunity for encouraging popular participation. For all their faults, CDCs offer a relatively proven way of creating positive connections between people and the state in a positive way and involving citizens in their own government.⁵ CDCs are the closest one gets in much of Afghanistan to the elected village councils called for by the constitution, and strengthening them is probably easier than trying to invent yet another “patch” institution. DDAs similarly offer an opportunity, at least in districts where they function or have functioned in the past, since it may be easier to revive or reinvigorate a known entity and a known set of processes, unless past experience too badly discredited the institution or process in question.

The MRRD, moreover, is implementing new guidelines for the CDC program, with the goal of making CDCs more effective in insecure areas, primarily by allowing local CDC facilitating partners greater flexibility and by “partnering with existing tribal, religious, and political structures to guarantee security for community representatives and programme personnel.”⁶ That said, the MRRD, in guidance issued in February to PRTs regarding engagement with CDCs, warns against reaching out to CDCs in insecure areas without first assessing whether or not the contact would put CDC members at risk.⁷

There may also be an advantage to engaging with MRRD-sponsored programs in addition to IDLG-run initiatives, such as ASOP and the DCCs. Not only does the MRRD bring

⁴ Hamish Nixon, personal communication with the author, March 2010.

⁵ Local survey results illustrating the CDCs' potential for connecting local communities to the Afghan state can be found in Barakat, 2006.

⁶ “Annex G: Engagement in Insecure Areas,” in *NSP Operational Manual Version V, 2009*, unpublished, n.d.

⁷ “NSP Guidelines for Provincial Reconstruction Teams' Engagement with Community Development Councils,” presented at PRT Conference, Kabul, Afghanistan: NATO/ISAF, March 16, 2010.

considerable expertise, experience, and capabilities to the table, but Afghan institutions like the MRRD and the IDLG tend to be politicized, with each representing a different constellation of patronage relationships. There may therefore be a value in working with both rather than relying on and favoring one alone.

Promote national programs. Hamish Nixon argues that a logical place to start building a relationship between citizens and the state is by ensuring that all communities understand their entitlements under already existing national development programs and the conditions required to implement them. According to Nixon, the existing programs frame the relationship as one of reciprocal obligations between government and community and a set of expectations to be met over time.⁸ The national programs include NSP, the National Rural Access Program, the Basic Package of Health Services program, and the Educational Quality Improvement Project. Nixon cautions against ignoring these while promoting off-budget or local, stand-alone initiatives (via U.S. Agency for International Development contracts or the Commanders' Emergency Response Program, for example) to support governance.

Secure the judiciary system while supporting judicial reform. The formal court system could be given a boost with improved security, training to improve capacity, higher pay, and material assistance (buildings, office supplies, access to legal texts, computers). Judges need personal protection, and courthouses similarly need to be secured.

The state court system cannot be rapidly expanded, nor can it compete with informal justice. Indeed, much has been written on the need to find ways to lash up the formal and informal justice sectors, something that is probably the *de facto* norm in much of Afghanistan, with each recognizing the authority of the other in certain domains. But state courts, as agents and representatives of the state in local life, need to be improved in the eyes of Afghan citizens for the benefit of the state as a whole. Thus, an appropriate goal should be to ensure that, at the very least, the courts that function do not compound locals' dissatisfaction with the state. Ideally, they should even make a good impression.

Seek innovative ways to measure success. Measuring success will be difficult, and perhaps the only true measure will be the longevity of the Afghan state subsequent to the withdrawal of international forces. There should, however, be indications that people are at least willing to participate in initiatives intended to encourage their participation, such as attendance at ad hoc *shuras*, participation in CDC elections, and an interest in turning to formal officeholders to address their concerns. Improvements in the stature of state courts could probably be measured by caseload, which should give some indication of a growth in interest in using the courts. Surveys would also be an important gauge of attitudes, although contested areas in particular have been inundated with survey-takers, and often with poor results. Infantry patrol reporting, engagement reports, and other atmospherics reports (e.g., Tactical Conflict Assessment Planning Framework) might prove to be more useful at the operational and tactical levels of focus.

⁸ Nixon, personal communication with the author, March 2010.

Conclusion

The challenge of the ongoing operations in Afghanistan is not to clear territory of Taliban presence but to fill the governance vacuum that helped make Taliban influence so strong in the first place. Subnational government in Afghanistan, however, suffers from numerous weaknesses, the most important of which, from the perspective of legitimacy and the desires of the Afghan population, is arguably an absence of performance and representation. Afghan government officials simply are not accountable to the people, who have little opportunity to communicate their interests anyway. In much of the country, the situation is compounded by acute insecurity.

Much of the burden of addressing the Afghan state's legitimacy deficit is on the shoulders of the Afghan state. However, its international partners can second their efforts. The goal should be to find ways to increase popular participation in government by engaging with informal fora, such as *shuras*, tribal elders, and the *ulema*, and by working with and trying to strengthen those few elements of the subnational state that offer an element of representative government, specifically the CDCs, DAAs, and DCCs. However, care must be taken to identify the individuals involved in these formal and informal bodies to ensure that they represent their communities and do not complicate our efforts.

Courts can also be assisted in the short term, primarily by addressing judges' security needs, providing training, and removing some of the material obstacles to their operations—i.e., the lack of court facilities, office materials, and legal references and manuals.

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